

Administrative Record
SF File Number
2060000

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Attachments:

- Comments on Cons. Decr.
- Consent Decree (ASARCO's version)
- RD/RA work plan

Copies to:

CH2M Hill (for rev.)
MDHES

Site East Helena

File # 2.06 and 1.04.04.00

Confidential: Yes ☐ No ☒

Admin. Record: Yes ☐ No ☒

Key Words/Comments: ASARCO's response

(good faith offer) to draft consent
decree and spec. notice for Process
Ponds RD/RA.

May 1, 1990

ENVIRONMENTAL PROTECTION
AGENCY

MAY 2 1990

MONTANA OFFICE

VIA HAND DELIVERY

Suzanne Bohan, Esquire
Office of Regional Counsel
United States Environmental
Protection Agency
Region VIII
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VIA FEDERAL EXPRESS

Mr. D. Scott Brown
EPA Region VIII
Federal Building
301 S. Park, Drawer 10096
Helena, Montana 59626-0096

RE: Asarco's Response to the Special Notice
Letter for East Helena Site

Dear Ms. Bohan and Mr. Brown:

This letter provides EPA with Asarco's good faith offer to conduct the necessary remedial design/remedial action ("RD/RA") for the Process Ponds Operable Subunit at the East Helena Site ("Site"). As required by the Special Notice Letter dated February 23, 1990, this letter also includes Asarco's paragraph-by-paragraph response to the substantive issues raised by EPA's proposed consent decree. Also enclosed is Asarco's proposed consent decree for the Process Ponds Operable Subunit which incorporates the revisions identified in Asarco's paragraph-by-paragraph response. This response also incorporates by reference the issues raised in our letter to EPA dated April 12, 1990, as well as in our discussions with you on April 18, 1990. Finally, this good faith offer includes a work plan for the RD/RA activities ("Work Plan"). Asarco is willing to conduct the RD/RA consistent with the Record of Decision and the enclosed consent decree and work plan.

Suzanne Bohan, Esq.
Mr. D. Scott Brown
Page 2
May 1, 1990

Asarco's proposed consent decree contains language providing a covenant not to sue. Asarco believes that the covenant not to sue is in the public interest in accordance with the factors delineated in section 122(f)(4) of CERCLA, 42 U.S.C. § 9622(f)(4), and that such a covenant will expedite the necessary response action for the Site. A covenant not to sue is also appropriate given Asarco's intent to comply fully with the provisions of the consent decree entered into for the Process Ponds Operable Subunit.

As requested in the Special Notice Letter, the work plan contains the description of how Asarco intends to implement the scope of work for this operable subunit, including the contingency remedy, if necessary. Asarco has contracted with Hydrometrics, Inc. to conduct the work required by the RD/RA work plan. Hydrometrics, Inc. has developed the Remedial Investigation/Feasibility Study for the entire East Helena Site and has consistently demonstrated the requisite technical capability to perform the RD/RA.

Asarco remains willing and able to reimburse EPA for its appropriate share of past response costs incurred at the Site. Asarco's willingness, however, is conditioned upon its receipt of additional documentation to support EPA's demand for past costs. To date, Asarco has received only minimal documentation to support approximately \$1,300,000 of the total demand of almost \$2,500,000 for past response costs. EPA has provided no documentation to support its demand for the remaining \$1,200,000.00. Asarco, therefore, renews its request for additional supporting documentation of all past response costs. Asarco's position with respect to reimbursement of costs incurred by EPA in overseeing Asarco's conduct of the necessary RD/RA, is set forth in the attached consent decree, and is also conditioned upon receipt of adequate supportive documentation. Asarco's position on releases from liability and reopeners to liability is also set forth in the appropriate sections of the attached consent decree.

Asarco believes that this good faith offer, in conjunction with the attached proposed consent decree and the attached proposed work plan, provides a sufficient basis to continue negotiations with EPA. As a result, Asarco anticipates the initial 60-day negotiation moratorium will be extended for an additional 60 days to permit Asarco and EPA to arrive at an appropriate settlement. Asarco's primary representative or contact person in these negotiations will be: Cynthia S. Leap, Esq., Holland &

Suzanne Bohan, Esq.
Mr. D. Scott Brown
Page 3
May 1, 1990

Hart, 555 Seventeenth Street, Suite 2900, Post Office Box
8749, Denver, Colorado 80201; (303) 295-8342. Additional
representatives will assist Ms. Leap in these negotiations.

If you have questions or comments regarding this good
faith offer, please do not hesitate to contact us. In the
meantime we look forward to continuing our negotiations.

Yours truly,


Cynthia S. Leap
Peter W. Downing
for Holland & Hart

PWD:ls

Enclosures

cc: Michael D. Goodstein, Esq.
Jeffrey Desautels, Esq.
Robert W. Lawrence, Esq.
William O. Hart, Esq.
Mr. Peter A. DeSantis
Mr. J. Bryan Davis
Mr. Jon C. Nickel
Mr. Donald A. Robbins
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